

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL E. MASSOD

Appeal No. 2004-0023
Application 09/334,574

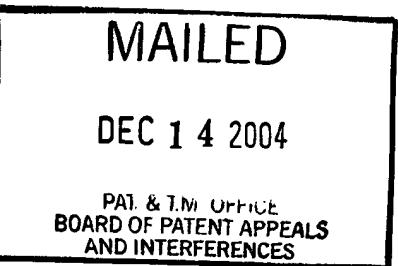
ON BRIEF

Before JERRY SMITH, RUGGIERO, and MACDONALD, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant requests that we reconsider our decision of August 17, 2004 wherein we sustained the Examiner's rejection of claims 1-4, 6-16, and 18-36 under 35 U.S.C. § 103(a). We have reconsidered our decision of August 17, 2004 in light of Appellant's comments in the Request for Rehearing, and we find no



error therein. We, therefore, decline to make any changes in our prior decision for the reasons which follow.

Appellant initially contends that our prior decision misinterprets the language of independent claim 1 as well as misconstrues the teachings of the Markman reference. We find no error, however, in our interpretation of the disclosure of Markman, nor in our conclusions drawn therefrom, as expressed in our prior decision.

Appellant reiterates the contention that, unlike the claimed invention which operates on manually grouped articles to verify that the grouping is correct, Markman is operating on ungrouped articles which are reassembled into groups after processing. In making this argument, Appellant relies on the claim language which recites that verification is performed on articles to verify that articles "which were physically grouped by a manual or automated grouping process into a physically grouped order, belong to the physically grouped order" In Appellant's view, this claim language must be interpreted as requiring verification after articles have been manually grouped after processing, i.e. after assembly.

We remain, however, of the opinion that there is nothing in the language of claim 1 which requires the interpretation urged

by Appellant. We find nothing in the claim language which requires that the stated manual grouping be performed at the output side of the processing. Conversely, there is no claim language which precludes the manual grouping from being performed at the input side of the processing as urged by the Examiner.

With this in mind, we find no error in the interpretation of Markman expressed in our prior decision, i.e., the reassembly after processing operation disclosed by Markman is in fact operating on articles "which were physically grouped" since the articles were assigned into groups and tagged at the customer input side. Further, although Markman does not use the terminology "verification," we fail to see why a successful reassembly (Markman, column 8, lines 35-41) would not be a "verification" that the reassembled group matches the grouping assigned at the customer input side of the processing.

As to Appellant's assertion that our prior decision cited no passage from Markman that would support our interpretation that Markman's output side assembling relates to a physical grouping at the input side, it is our view that the citation of any particular passage is unnecessary since it is apparent to us that the entire disclosure of Markman is directed to precisely this feature. In other words, as illustrated in Figure 1 of Markman,

a customer's articles to be dry cleaned are physically grouped and are tagged with coded identification. After processing, the coded tags on the articles are scanned and reassembled into groups corresponding to the original grouping with an indicator light arrangement to "verify" that a group has successfully been reassembled.

We further find no error in the conclusion reached in our prior decision that the lighting indicator arrangement 92, 94 in Markman provides a "positive" indication that a scanned item does not belong in a particular grouped order. Although we don't necessarily agree or disagree with Appellant's contention that the system of Markman would not provide any positive indication that an item was incorrectly placed when working on plural lots with mixed groups, the simple fact remains that there is nothing in the claim language directed to mixed lots and groups.

With respect to claims 3, 4, and 7, Appellant contends that the Board erred in their analysis of Markman since, in Appellant's view, ". . . . Markman does not utilize a system that possess [sic] 'unique sequential identifications' whether in the form of bar codes and or machine readable text." (Request, page 5). We do not agree. As discussed in our prior decision, the tags illustrated in Figure 3 of Markman are unmistakably

designated with sequential numbers (1, 2, 3, 4) and are clearly capable of being read by a machine, i.e. they are machine readable as claimed.

Lastly, we find no error in our prior decision which concluded, with respect to claims 28-33, that the Examiner's line of reasoning in relation to the proposed combination of Markman and Amacher establishes a prima facie case of obviousness which has not been overcome by Appellant's arguments and/or evidence. Appellant's assertions to the contrary notwithstanding, we remain of the view, for all of the reasons discussed supra and in our prior decision, that Markman does in fact disclose a "verification" process as claimed, while Amacher provides a teaching of indicating the successful or unsuccessful status of a scanning operation.

In conclusion, based on the foregoing, we have granted Appellant's request to the extent that we have reconsidered our decision of August 17, 2004, but we deny the request with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective September 13, 2004; 69 Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. and TM Office 21 (September 7, 2004)).

REHEARING/DENIED

Jerry Smith

JERRY SMITH)
Administrative Patent Judge)
)

Joseph F. Ruggiero)
JOSEPH F. RUGGIERO)
Administrative Patent Judge)
)
BOARD OF PATENT
APPEALS AND
INTERFERENCES

Allen R. Macdonald)
ALLEN R. MACDONALD)
Administrative Patent Judge)
)

Appeal No. 2004-0023
Application No. 09/334,574

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON MA 02110